

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

PERIODIC REPORTING OF SERVICE  
PERFORMANCE

Docket No. RM2022-7

**COMMENTS OF THE UNITED STATES POSTAL SERVICE  
AND NOTICE OF FILING OF MATERIALS UNDER SEAL**  
(October 31, 2022)

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## **TABLE OF CONTENTS**

I.	The Online Dashboard Requirements are Unduly Burdensome .....	2
A.	Requiring Reporting of Performance Information for Each 5-Digit ZIP Code Would be Unduly Burdensome.....	3
B.	Requiring Data to be Exportable in Multiple Machine-Readable Formats Would be Unnecessarily and Unduly Burdensome .....	5
C.	Performance Information by the Current Area and District Geography Will Only Be Available for FY2022 and Beyond.....	6
D.	Due to Data Limitations, the Postal Service Proposes Reporting Political, Election, and Nonprofit Performance Using Mail Processing Scores .....	6
E.	Root Cause Point Impact Data Should be Excluded from the Reporting Requirements for Nonprofit Mail.....	8
II.	The Proposed Rules Establish Impractical, Burdensome, and <i>Ultra Vires</i> Reporting Requirements for Nonpostal Services .....	9
A.	Chapter 37 Does Not Authorize the Commission to Require “On-Time Service Performance” Reporting on Nonpostal Products .....	9
B.	The Reporting Requirements of Chapter 37 Do Not Apply to Competitive Nonpostal Products .....	16
C.	Reporting on Interagency Agreements Should Be Confined to Net Revenue Generated by Such Agreements as a Whole.....	18
III.	Site-Specific Operating Plan Reporting Requirements Should be Revised to Enable Reporting of Available Information. ....	21
IV.	The Timing of the New Proposed Requirements Should Accord with the PSRA and Should be Reasonably Tailored to Each New Requirement. ....	22
A.	New Requirements Should Apply Only Prospectively. ....	22
B.	The PSRA Requires Only Annual Reporting for Nonpostal Services. ....	24
C.	Reasonable Time Should be Afforded to Implement Any New Reporting Requirements. ....	26
V.	Other Observations.....	31
A.	Actual Days to Delivery .....	31
B.	Root Cause Point Impact Data.....	32
C.	Mail Excluded from Measurement.....	33
VI.	Conclusion.....	35

The United States Postal Service (Postal Service) respectfully submits these comments in response to the notice of proposed rulemaking issued by the Postal Regulatory Commission (Commission) on September 21, 2022, and published in the Federal Register on September 30, 2022.<sup>1</sup> In Order No. 6275, the Commission established a rulemaking docket, RM2022-7, and proposed revisions to update the existing annual and periodic service performance requirements for the Postal Service's market dominant products, as well as related revisions consistent with the Postal Service Reform Act of 2022 (PSRA).<sup>2</sup>

The most recent rulemaking initiated in Order No. 6275 follows the Commission's advance notice of proposed rulemaking in this matter.<sup>3</sup> The Postal Service and five other stakeholders submitted comments in response to that notice.<sup>4</sup> The Postal Service also submitted reply comments.<sup>5</sup> The Commission accepted certain of the comments and recommendations outlined in the Postal Service's Initial Comments and Reply Comments, and the Postal Service does not oppose expanding the existing service performance reporting rules in many of the respects proposed by the Commission, subject to certain refinements. However, other portions of the Commission's proposed

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<sup>1</sup> Docket No. RM2022-7, Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance (Sep. 21, 2022) (Order No. 6275); see 87 Fed. Reg. 59363-59370 (September 30, 2022) (establishing a due date for comments of October 31, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Docket No. RM2022-7, Advance Notice of Proposed Rulemaking to Revise Periodic Reporting of Service Performance, (Apr. 26, 2022) (Order No. 6160).

<sup>4</sup> Docket No. RM2022-7, Comments of the United States Postal Service, June 3, 2022 (Initial Comments); *see also* Comments of the National Association of Presort Mailers, June 3, 2022; Comments of the National Postal Policy Council, June 3, 2022; Comments of Alliance of Nonprofit Mailers, June 3, 2022; Comments of the Association for Postal Commerce, June 3, 2022; Public Representative Comments, June 3, 2022.

<sup>5</sup> Docket No. RM2022-7, Reply Comments of the United States Postal Service, June 24, 2022 (Reply Comments); Notice of Errata to Reply Comments of the United States Postal Service, July 1, 2022.

rules would impose undue burden, duplicate existing reporting, be of limited utility to the Commission and the public, and/or exceed the requirements set forth in the PSRA.

In the spirit of continued cooperation, and to provide additional input at this stage of the Commission's consideration of its new proposed reporting requirements, the Postal Service addresses four main concerns in these comments that relate to: (1) the undue burden for the Postal Service to satisfy certain of the Commission's proposed reporting requirements, including in particular the proposal to require service performance reporting at the 5-Digit ZIP Code level; (2) the Commission's proposed reporting for nonpostal services; (3) revisions to the Commission's proposed reporting for Site-Specific Operating Plans; and (4) the timing to implement the Commission's proposed requirements. In addition, the Postal Service offers additional observations on the proposed rules, specifically noting practical steps needed to implement the proposed requirements.

#### **I. The Online Dashboard Requirements are Unduly Burdensome**

The Postal Service Reform Act (PSRA) provides that "[t]he Postal Service shall develop and maintain a publicly available Website with an interactive web-tool that provides performance information for market-dominant products that is updated on a weekly basis."

In Order No. 6160, the Commission sought comment on how best to implement the online dashboard requirements set forth in the PSRA. In response, the Postal Service—the party best positioned to judge the level of effort involved in designing the dashboard and maintaining its content—proposed that the online dashboard would include service performance scores and service standards by market dominant mail

class (i.e., First-Class Mail, USPS Marketing Mail, Periodicals, and Package Services), at the Area and District levels, be regularly updated, and include a ZIP Code look-up feature. The Postal Service's proposal is wholly consistent with the statutory requirements of the PSRA.

**A. Requiring Reporting of Performance Information for Each 5-Digit ZIP Code Would be Unduly Burdensome and is Inconsistent with the PSRA**

In proposed 39 C.F.R. § 3055.102, the Commission proposes that the online dashboard include performance data for each market dominant product presented down to the ZIP Code level. Moreover, the Commission added these requirements notwithstanding the Postal Service's assertion that "[r]equiring such additional detail ... would provide no useful insight into Postal Service performance, is inconsistent with the framework provided in the [PSRA] and would increase the expense and burden of maintaining the dashboard."<sup>6</sup>

The Postal Service strongly opposes this proposal. In this regard, the PSRA expressly limits the need to report performance information at the ZIP Code level "to the extent practicable." As the Postal Service's position made clear, providing weekly updated service performance information for each market dominant product down to the ZIP Code level is not practicable, and nothing in Order No. 6275 suggests otherwise—indeed, requiring ZIP Code level data beyond what is practicable exceeds the authority granted in the PSRA.

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<sup>6</sup> Docket No. RM2022-7, Reply Comments of the United States Postal Service (June 24, 2022), at 9.

The Postal Service maintains that the Commission's request to provide ZIP Code level service performance data on the online dashboard would be unduly burdensome to the Postal Service, and the benefits of any such reporting are far exceeded by the costs, which would be very significant. The current system measures service performance at the District level and not at the ZIP Code level. The Commission's request would require a reengineering of the internal service performance measurement system and processes at significant workload and cost to the Postal Service with questionable benefit. Reengineering would require the Postal Service to redefine sampling methodology to ensure that the system continues to produce scores with 95 percent confidence level of +/-1 percent margin of error. This would require the Postal Service to perform approximately 25 times more carrier sampling of mailpieces at collection and delivery to ensure the scores at the ZIP Code level remain accurate, reliable, and representative. The current cost of sampling to support District-level reporting is estimated to be approximately \$[Estimate A] annually.<sup>7</sup> The Postal Service estimates the total cost of sampling to support 5-digit ZIP Code-level reporting to be approximately \$[Estimate B] annually—an astronomical \$[Estimate C] increase in cost. Additionally, it would cost the Postal Service approximately \$[Estimate D] in software development costs and \$[Estimate E] in annual system operating costs (\$[Estimate F] for infrastructure and \$[Estimate G] for labor) to support this additional reporting requirement.

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<sup>7</sup> As cost estimates could reveal sensitive commercial information that would undermine the competitive procurement process, the Postal Service has filed certain financial estimates under seal. See Attachment 2. An application for nonpublic treatment accompanies these Comments. See Attachment 1.

There is no basis to conclude that Congress intended the public dashboard provision of the PSRA to require the Postal Service to so dramatically increase the costs of service performance measurement. Rather, the Postal Service proposes instead—consistent with the PSRA requirement that ZIP Code level data be provided only to the extent practicable—that the Dashboard provide the ability for users to enter their ZIP Code and then have the Dashboard display the corresponding District's service performance. This approach maintains the accuracy, reliability, and representativeness of service performance scores without adding an undue workload and cost burden to the Postal Service and is wholly consistent with congressional intent. This alternative is supported by the system as it presently exists. The Postal Service thereby proposes changes to proposed 39 C.F.R. § 3055.102 in Attachment 3.<sup>8</sup>

**B. Requiring Data to be Exportable in Multiple Machine-Readable Formats Would be Unnecessarily and Unduly Burdensome**

As proposed in 39 C.F.R. § 3055.103, the Postal Service will make query results and data exportable in machine-readable format and proposes that the format be limited to a comma-separated values (CSV) file, which is a universal format. Requiring that the Postal Service accommodate multiple data exporting formats is unnecessarily burdensome as the CSV format would readily allow exported data to be imported later into tables such as Excel. In addition, requiring multiple formats will unduly increase the workload and costs associated with developing and maintaining the data export formats and exchange methods, which the Postal Service estimates would require an initial

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<sup>8</sup> For the Commission's convenience, another copy of Attachment 3 is filed as a Word document accompanying these Comments, showing the changes to the rules as they were proposed in Order No. 6275.

expenditure of \$400,000 and an annual expense of \$35,000 above the cost of a single CSV format.

**C. Performance Information by the Current Area and District Geography Will Only Be Available for FY2022 and Beyond.**

As proposed in 39 C.F.R. § 3055.102(d)(1-2) regarding the time period of service performance information to be included on the Dashboard, the Postal Service will incorporate service performance and average delivery time for the period selected by the user within the current and previous two fiscal years to allow for comparability of service performance going back to the beginning of FY 2022, subject to the limitation that information for the current Area and District geography will only be available for FY 2022 forward. Prior to FY 2022, such information was not maintained by current Area and District geography. This limitation will only impact the “previous two fiscal years” during FY 2023, after that the previous two fiscal years of information will be available. The Postal Service accordingly offers edits to proposed 39 CFRC.F.R. § 3055.102(d)(1-2) in Attachment 3.

**D. Due to Data Limitations, the Postal Service Proposes Reporting Political, Election, and Nonprofit Performance Using Mail Processing Scores**

Proposed 39 C.F.R. § 3055.102(f, g) directs the Postal Service to report political and election mail service performance on the external dashboard. Although the architecture is in place to provide this information, the available data have limitations. Political and election mail are not separate products and are measured as part of either First-Class Mail or USPS Marketing Mail. The Postal Service does not maintain comprehensive records by which end-to-end service performance (including first mile and last mile) for political and election mail can be measured and reported on a



representatively accurate basis. Furthermore, the Postal Service is dependent on visibility data—electronic documentation (eDoc) and service type identification (STID)—received from mail service providers that flag mailpieces as political and/or election mail. The Postal Service cannot systematically track and analyze the service performance of Election Mail generally, separate from the service performance of First-Class Mail or USPS Marketing Mail as appropriate, that does not utilize these features (eDoc & STID). As an alternative, the Postal Service proposes to report only processing scores<sup>9</sup> for political and election mail, to the extent identifiable.<sup>10</sup> The Postal Service accordingly offers edits to proposed 39 C.F.R. § 3055.102(f, g) in Attachment 3.

With respect to the proposal in 39 C.F.R. § 3055.102(i), that service performance of nonprofit mail be separately reported on the Dashboard, the Postal Service does not maintain comprehensive records by which end-to-end service performance (including last mile) for nonprofit mail can be measured and reported on a representatively accurate basis. Furthermore, the Postal Service is dependent on visibility data—electronic documentation (eDoc)—received from mail service providers that flag mailpieces as nonprofit mail. As an alternative, in proposed 39 C.F.R. § 3055.102(i) in

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<sup>9</sup> A “processing score” is a measurement from the time a mailpiece is in Postal Service possession (*i.e.*, start-the-clock) to the last processing scan (*i.e.*, stop-the-clock). The score does not include first mile or last mile service performance impacts. It is used to determine if movement through the processing operations is timely when measured against the established service standards and service performance measurement business rules.

<sup>10</sup> The Postal Service notes that in many cases it has implemented extraordinary measures to expedite election mail, such as arrangements for “local turnaround” of ballots such that locally entered ballots are postmarked and provided directly to the board of elections without ever entering the processing operation and arrangements for special sortation that bypasses the expected standard mailflow. While these extraordinary measures expedite delivery, they bypass processing scans and are, therefore, not captured in the performance score measurement. In that respect, the performance score for election mail will not represent actual overall performance.

Attachment 3, the Postal Service proposes to report only the processing scores<sup>11</sup> for nonprofit mail.

**E. Root Cause Point Impact Data Should be Excluded from the Reporting Requirements for Nonprofit Mail**

Proposed 39 C.F.R. § 3055.102(i)(9) proposes that nonprofit service performance reports include root cause point impact data. This requirement appears to be mistakenly included in the proposed regulation even though it was apparently rejected in the Commission's analysis of Dashboard nonprofit mail reporting in Order 6275. In particular, the inclusion of root cause point impact data was seemingly proposed by the Alliance of Nonprofit Mailers (ANM) in conjunction with the request to disaggregate nonprofit and commercial mail reports. Order No. 6275 at 20. In its analysis, the Commission accepted ANM's proposal only "insofar as the Commission proposes that USPS Marketing Mail mailpieces that qualify for reduced rates ... and Periodicals mailpieces that qualify for reduced rates ... be separately reported on the proposed service performance dashboard." *Id.* at 22. The Commission does not appear to accept the inclusion of root cause point data on the Dashboard and such inclusion is not mentioned in the analysis.

Indeed, rejecting the inclusion of root cause point data on the Dashboard accords with the express language of the PSRA, which contemplates that Dashboard provide only "performance information." While root cause point data may be useful in identifying causes for delay in particular products, they are not, in themselves "performance information" within the language of the PSRA.

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<sup>11</sup> See *supra*, note 9.

Moreover, requiring root cause data for nonprofit mail on the dashboard would be inconsistent with the overall treatment of root cause impact data, which is proposed to be reported only for those market dominant products that did not meet their service performance goals. (*Id.* at 7-8.) In accordance with proposed sections 3055.20(c), 3055.21(b), 3055.22(b), and 3055.23(b), discussed below, point impact data will be provided in the annual compliance report for the market dominant products that do not meet their service goals. It should be noted that nonprofit is not a distinct product but a pricing category.<sup>12</sup> Point impact data are not disaggregated at this level and the Public Performance Dashboard should not be required to include the root cause data for Nonprofit mail.

## **II. The Proposed Rules Establish Impractical, Burdensome, and *Ultra Vires* Reporting Requirements for Nonpostal Services**

### **A. Chapter 37 Does Not Authorize the Commission to Require “On-Time Service Performance” Reporting on Nonpostal Products**

The Commission proposes that, “[f]or each product that is a nonpostal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the on-time service performance (as a percentage rounded to one decimal place).” The type of reporting herein prescribed exceeds the Commission’s remit, as evidenced by the plain language of chapter 37, by Congress’s intent regarding nonpostal services, and by careful consideration of the products involved.

Per section 3701 (“Purpose”), “[t]he purpose of this chapter is to enable the Postal Service to increase its net revenues through specific nonpostal products and

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<sup>12</sup> See Mail Classification Schedule § 1200.2 (listing products in USPS Marketing Mail); see also Appendix A to Subpart A of Part 39 C.F.R. Part 3040 - Market Dominant Product List.

services that are expressly authorized by this chapter.” Congress thus makes no secret of its overriding concern regarding such products—namely, that taken as a whole, they generate revenues sufficient to offset the costs incurred by their provision. This attunement to issues of *cost* is accordingly made manifest throughout chapter 37, not the least in the section (section 3705, “Transparency and accountability for nonpostal services”) that most explicitly addresses service reporting. That section obligates the Postal Service to “submit to the Postal Regulatory Commission a report that analyzes costs, revenues, rates, and quality of service for each agreement or substantially similar set of agreements for the provision of property or nonpostal services under section 3703 or the program as a whole under section 3704, and any other nonpostal service authorized under this chapter, using such methodologies as the Commission may prescribe, and in sufficient detail to demonstrate compliance with the requirements of this chapter.”

Tellingly, section 3705 here echoes 39 U.S.C. section 3652(a) (“Costs, rates, and service”)—but only up to a point. There, too, Congress provides that the Postal Service submit reports “which analyze costs, revenues, rates, and quality of service, using such methodologies as the Commission shall by regulation prescribe. . .” Section 3652, however, issues specifications nowhere apparent in chapter 37. For instance, it states that “for each market dominant product,” the Postal Service shall provide “product information, including mail volumes”; and it enumerates the criteria that—when applied to “mail,” which is dispatched, transported, and delivered, and to which “on-time service performance standards” can feasibly be applied—define “quality of service.” These latter include “the level of service (described in terms of speed of delivery and reliability)

. . . .” Congress was presumably aware, in drafting chapter 37, of the language it had copied verbatim from section 3652. Had Congress intended to incorporate section 3652’s definition of “quality of service,” requiring a report on (for instance) the “speed of delivery” of nonpostal products, it could easily have done so. It did not.

That Congress did not intend to transfer onto nonpostal services a reporting scheme designed solely for postal services is further confirmed by the notice requirements prescribed by section 3703: “[n]ot more than 90 days after offering a service under the program, the Postal Service shall make available to the public on its website—(1) the agreement with the agency regarding such service; and (2) a business plan that describes the specific property or nonpostal service to be provided, the enhanced value to the public, and terms of reimbursement to the Postal Service.” By way of contrast, 39 U.S.C. § 3642 requires that, before adding or transferring a product to a different category, the Postal Service file with the Postal Regulatory Commission and publish in the *Federal Register* a notice setting out the basis for its determination. The difference between these two approaches to transparency, embodied in the distinct (and wholly novel) requirement that agreements within the meaning of section 3703 be published on the Postal Service’s own website (but not approved in advance by the Commission), signals a clear intent to distinguish between the regulatory compliance frameworks envisioned for postal and nonpostal services. Within the former, “on-time service performance measurements” fit naturally and are required; within the latter, they do not, and are not.

On the other hand, Congress *does* explicitly require that nonpostal services within the meaning of section 3703 (“Postal Service program for State governments”)

cover their costs, and that nonpostal services within the meaning of section 3704 (“Postal Service program for other Government agencies”) likewise cover their costs. Furthermore, as noted above, section 3701 acknowledges the single animating purpose behind chapter 37: namely, “to enable the Postal Service to increase its net revenues through specific nonpostal products and services. . . .” When Congress stipulated that the reports envisioned by section 3705 must provide “sufficient detail to demonstrate compliance with the requirements of this chapter,” it was clearly focused on cost coverage.

It could perhaps be objected that the condition set forth in section 3705, “in sufficient detail to demonstrate compliance with the requirements of this chapter,” establishes not a “ceiling” but a “floor”; and that, as a result, the Commission (“using such methodologies as [it] may prescribe”) has discretion to exceed the minimum threshold devised by secs. 3701, 3703, 3704 and 3705. Even if, *arguendo*, that were the case, the Commission is not thereby authorized to prescribe “methodologies” that, in their inappositeness to the products under measurement, would place unwarranted and indeed impossible burdens on the Postal Service with no discernable upside. In fact, it is explicitly proscribed from doing so by the statute itself. Specifically, under section 3705(b), Congress imposed key considerations that militate against the imposition of unjustified burdens, viz., that “[i]n prescribing such regulations [as required under subsection (a)], the Commission shall give due consideration to—(A) providing the public with timely, adequate information to assess compliance; [and] (B) avoiding unnecessary or unwarranted administrative effort and expense on the part of the Postal Service. . . .” This limitation necessitates some consideration of the nonpostal services

themselves, which are numerous and diverse. In fact, those services not expressly denominated by 39 U.S.C. § 102—“the delivery of letters, printed material or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto”—are qualified by 39 U.S.C. § 404(e) as “nonpostal.” It is far from obvious what single quantitative metric might track the “quality of service” that purchasers of these services may or may not enjoy. It is, however, abundantly clear that few, if any, of these services would prove amenable to the evaluative criterion, well-tailored to *postal* services, but not at all to the remainder excluded from section 102, of “on-time service performance.”

Consider “officially licensed products,” the broadly sweeping licensing service that includes, *inter alia*, a line of merchandise purveyed by Forever 21; various toys bearing the USPS logo; U.S. Postal Service non-fungible tokens (NFTs); and Mr. ZIP, aka “Zippy,” a cartoon character who nearly 60 years ago introduced ZIP Codes to the American public. Consider too “Mail Service Promotion,” which (in its competitive variant) curates links to third-party vendors who offer services (e.g., printing and marketing) that business mailers may find of use. (This particular service, it bears emphasizing, inheres in the information provided; customers enter into privity of contract, if at all, with the third-party vendors to whom they are referred.) Mail Service Promotion is not to be confused with advertising, a nonpostal service which the Postal Service also on occasion provides, and which involves the placement of a customer’s advertising materials on the Postal Service’s website, in specified retail locations, or at other postal venues. On the more concrete end of the spectrum, the Postal Service offers lease agreements for Postal Service personal property, such as for the

positioning of sensors and/or data collection devices on U.S. Postal Service vehicles. The Postal Service also licenses certain of its intellectual property, rents space in its various brick-and-mortar properties, offers passport photo services, and sells stamp-related items (first day covers, ceremony programs, uncut press sheets, framed stamps, binders for storing stamps, stamp yearbooks, philatelic guides, etc.) to support philatelists in their hobby of choice. In the future it may, by arrangement with state governments, sell state or local services such as fishing licenses.

As the above examples make clear, postal and nonpostal services are in key respects incomparable; measurement systems designed for one cannot, and should not, simply be transferred to the other. It is not possible to assess the “on-time service performance” (to one decimal place no less) of Mr. ZIP, or of a parking lot lease, or of any number of the services properly designated as “nonpostal.” Nor would efforts to comply with such a requirement provide “timely, adequate information” or aid in “the assessment of compliance” to any intelligible standard. It would in fact yield no meaningful data at all. (The “on-time performance” of an IP license will register either as 100 percent or as 0 percent—a proposition as self-evident as it is unhelpful.) In short, forcing the Postal Service to devise artificial measurement systems, and to submit what dubious results those systems produce, would impose “unnecessary” and “unwarranted administrative effort and expense” in violation of section 3705(b), and without any corresponding benefit.

These remarks do not exempt all nonpostal services from all reporting requirements, and they are not intended to. As mentioned, the purpose of chapter 37 is to “enable the Postal Service to increase its net revenues through specific nonpostal



products and services that are expressly authorized by this chapter.” For most of the nonpostal services authorized by chapter 37, revenue is or can be calculated. Certain nonpostal services may also lend themselves to quality-of-service reporting beyond the calculation of revenue; such reporting, however, would need to be tailored to the individual service in question, and should as such be developed on a case-by-case basis.

Finally, should the Postal Service elect to establish a program under section 3703 to form agreements with State, local or tribal governments, it will of course comply with applicable portions of section 3705, subject to the limitations described above. Depending on the specific program, this could potentially include reporting on quality of service under section 3705, to the extent, if any, that agreements pursuant to section 3703 (or substantially similar sets of such agreements) are premised upon enhanced quality of service in accordance with section 3703(a)(1)(A). Tellingly, subsection 3703(a)(1)(A) is the lone clear indication in the PSRA of a substantive purpose to assess quality of service for any new nonpostal services; it is therefore only in that context that section 3705’s quality of service reporting requirement should be understood.

In any event, the Commission’s proposal simply to apply to nonpostal services the same reporting obligations used for postal services would exceed the stated purpose of chapter 37 and impose unwarranted and unnecessary burdens on the Postal Service.

## **B. The Reporting Requirements of Chapter 37 Do Not Apply to Competitive Nonpostal Products**

The remarks above are subject to a further limitation. Construed in light of the overall statutory scheme, the only classified nonpostal services that should be subject to quality-of-service reporting, if at all, are the two market dominant nonpostal services grandfathered in under 39 U.S.C. section 404(e): (1) alliances or agreements with the private sector entities for the provision of a core postal function or the funding of the function; and (2) philatelic sales.<sup>13</sup> Philatelic sales are already included in service performance measurement and reporting via the Stamp Fulfillment Services product. With respect to private-sector alliances or agreements, such agreements are not amenable to meaningful quality-of-service measurement, and, accordingly, there is no basis to establish reporting rules for that service.

Unlike market dominant postal services, there are no statutory requirements for establishment of competitive nonpostal service standards or measurement systems. Section 3691 requires the Postal Service, in consultation with the Commission, to establish service standards and service performance measurement systems for market dominant products. Section 3652, in turn, establishes specific reporting requirements for market dominant products. In contrast, for competitive products, there are no such statutorily prescribed requirements for the establishment of service standards or performance reporting requirements like those found in section 3691. For this reason, the Commission and the Postal Service have consistently understood statutory service performance measurement and reporting requirements to apply only to market

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<sup>13</sup> See Mail Classification Schedule § 1700; see also Appendix A to Subpart A of Part 39 C.F.R. Part 3040 - Market Dominant Product List.

dominant products, and not to competitive products. Nor did Congress specify service performance measurement and reporting for any and all nonpostal services grandfathered under section 404(e); rather, such measurement and reporting would flow only, if at all, from such services' regulation as market dominant products pursuant to section 404(e)(5).

There is a sound basis for this distinction. Unlike market dominant products, the market itself provides sufficient incentives for quality of service for competitive products. If quality is perceived as inadequate (when considered with all other factors, such as price and features), customers in competitive markets have alternative choices. Accordingly, layering regulatory reporting requirements on competitive products distorts, rather than enhances, the market for those products.

Congress is presumed to have been aware of this overall regulatory scheme when it enacted chapter 37.<sup>14</sup> Section 3705 mirrors the longstanding language in section 3652(a)(1), which has never been interpreted as creating a freestanding service performance reporting requirement for products not already subject to the more prescriptive requirements in secs. 3652(a)(2)(B) and 3691—that is, for products other than market dominant products. Identical language in the two sections, which concern similar subject matter, should be construed *in pari materia*. Chapter 37 does not provide for any services offered thereunder to be regulated as market dominant

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<sup>14</sup> See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156 (2000) (finding that Congress is assumed to be aware of regulatory history applying existing statutes to tobacco products); *Citizens Against Casino Gambling in Erie County v. Chaudhuri*, 802 F.3d 267, 287 (2d Cir. 2015) (“We presume that Congress was familiar with the regulatory definition of these terms when enacting [the relevant statute] because Congress is ‘aware of existing law when it passes legislation.’” (quoting *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990))).

products other than already-grandfathered services under section 404(e)(5). The natural conclusion is that, other than potentially with respect to section 3703(a)(1)(A), the reference in section 3705 to “quality of service” reporting should otherwise extend no farther than it does under section 3652, and therefore only, at most, as far as any section 404(e) services are classified as market dominant.

Insofar as those specific market dominant services are concerned, service performance measurement and reporting has already been resolved for one such service and would be meaningless for the other. In the first instance, fulfillment of Philatelic Sales orders is already measured and reported via the Stamp Fulfillment Services product.<sup>15</sup> The second service at issue encompasses two alliances with private-sector entities to publish change-of-address and postal-retail-location information in exchange for a share of advertising revenue. As with many nonpostal services, it is difficult, if not impossible, to conceive of what “service performance” might mean in this context.

### **C. Reporting on Interagency Agreements Should Be Confined to Net Revenue Generated by Such Agreements as a Whole**

The Postal Service interprets the Commission’s proposed addition to 39 C.F.R. § 3055.25 to exclude interagency agreements (IAAs) within the meaning of 39 U.S.C. section 411.

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<sup>15</sup> 39 C.F.R. Section 122.2(e) (providing a service standard for order fulfillment with respect to “Philatelic/Custom and All Other Order Sources”); *id.* Section 3055.65(d)(1) (requiring reporting for Stamp Fulfillment Service “by customer order entry method”); Docket No. RM2011-14, Order Establishing Final Rule Concerning Periodic Reporting of Service Performance Measurements for Stamp Fulfillment Services (Nov. 4, 2011), at 5 (Order No. 947) (explaining that “customer order entry method” includes the Philatelic/Custom/Other line item); *see, e.g.*, U.S. Postal Serv., FY 2022 Quarter 2 Service Performance Measurement Data (May 10, 2022), Microsoft Excel file “Special Services 222 Scores Report.xls”, tab “Special Services Narrative” (“This report includes the on-time performance and service variance results for . . . Philatelic / Custom & All Other Order Sources with Ten-Day service standard[.]”).

That IAAs are not “nonpostal service[s] authorized pursuant to 39 U.S.C. chapter 37” is made clear by the conforming amendments to sections 404(e), 411, and “existing nonpostal products” enacted under section 103(b) of the PSRA. Note that, pursuant to these amendments, “nonpostal services” as defined by section 404(e) and “existing nonpostal services” generally are tightly intermeshed: section 404(e) now includes “any nonpostal products authorized by chapter 37,” while chapter 37 is made to authorize “[a]ll individual nonpostal services. . . that are continued pursuant to section 404(e) of title 39, United States Code.” IAAs, meanwhile, are addressed separately and—more to the point—are not expressly authorized pursuant to chapter 37. Rather, IAAs are authorized by section 411, with chapter 37 only imposing certain limitations regarding reimbursability. This is crucially important because “the term ‘nonpostal services is limited to services offered by the Postal Service that are expressly authorized by this chapter and are not postal products or services,” (emphasis added) as chapter 37 (“Definitions”) states. The asymmetry between, on the one hand, nonpostal services authorized jointly by section 404(e) and chapter 37 and, on the other, IAAs within the meaning of section 411, should accordingly be read to exempt IAAs from the Commission’s proposed reporting requirements. To conclude otherwise would be not only to disregard the carefully crafted structure of section 103(b), but to collapse the statutory scheme encompassing section 404(e) and section 411 as distinct sources of authority.

Excluding IAAs from the scope of service reporting, as the Commission does in its rule, is also the correct outcome. Insofar as section 3705 applies to IAAs, it is only to the extent that section 103(b)(2) of the PSRA subordinates the “reimbursability”

arrangements permitted by section 411 to the “the limitations of chapter 37.” That is to say, section 3705 requires only that net revenues be reported for the sum total of the “program” of IAAs.

This interpretation of section 3705 and its requirements is corroborated, first of all, by section 411, which describes IAAs in a manner that recalls the elements of contract formation: “The furnishing of property and services under this section shall be under such terms and conditions, including reimbursability . . . as the Postal Service and the head of the agency concerned shall deem appropriate.” One need not characterize IAAs as literal contracts to grasp the analogy or understand its implications. Two competent parties strike a bargained-for exchange, culminating in the mutual acceptance of terms and conditions, and extracting from either side some form of consideration. They negotiate at arm’s length, and are in an economic sense rational, insofar as they seek to further their respective interests. (That these interests are not entirely reducible to pecuniary gain does not weaken the analogy, since each party is presumably responsive to its delegated mission.) To the formation of such arrangements, the concept of “service performance” falls entirely beside the point, as no conceivable benchmark could inform the determination that they have arrived too soon, too late, or with flawless punctuality. The bare fact of the agreement speaks for itself—and it tells the entire story.

Furthermore, if section 3705’s requirements apply to IAAs within the meaning of section 411, they do so only with regard to “the program as a whole under section 3704.” On the “program” authorized by section 3704, Congress imposed but one condition: it must “provide[] a net contribution to the Postal Service, defined as

reimbursement that covers at least 100 percent of the costs attributable for property and nonpostal services provided by the Postal Service in each year to such agencies.”

Documentation of the program’s net contribution would therefore satisfy section 3704’s prerequisite and—by extension—the requirement carried over into section 3705.

It would also stay within the bounds of feasibility. The program of IAAs would necessarily vary no less widely than do those “nonpostal services authorized pursuant to 39 U.S.C. chapter 37.” Many involve activities that are simply not susceptible to measurement beyond the recording of revenue. More importantly, no single performance metric could meaningfully be applied to all IAAs simultaneously; nor can any “quality of service” reporting mechanism sufficiently capacious to accommodate “the program as a whole under section 3704” be invented—indeed, it is impossible to imagine what any such mechanism would consist of, aside from the redundant affirmation that section 3704’s prerequisite has been satisfied. To insist on anything more than that prerequisite would thus preclude reporting on “the program as a whole,” thereby undercutting the plain language of section 3705.

The Postal Service has therefore suggested changes to proposed 39 C.F.R. §§ 3055.25 & 3055.30 in Attachment 3 (and no changes are needed to existing 39 C.F.R. §§ 3055.1 & 3055.70; see also *infra* Part IV.B).

### **III. Site-Specific Operating Plan Reporting Requirements Should be Revised to Enable Reporting of Available Information.**

The Commission proposes that the Postal Service include, both in the required annual reporting under proposed 39 C.F.R. § 3055.2(m) and in the required periodic reporting under proposed 39 C.F.R. § 3055.31(g), “[a] description of each Site-Specific Operating Plan, including on-time service performance (as a percentage rounded to one

decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal” year or quarter. The reference here to “on-time service performance” appears to request data related to the mail in measurement that failed and/or passed per each Site-Specific Operating Plan. Such data do not exist. Site-Specific Operating Plan compliance looks at the operation completion time, as did the 24-hour clock measurement.<sup>16</sup> On-time service looks at individual piece level information. The two do not converge. The Postal Service proposes, therefore, to revise this reporting requirement to include a description of each Site-Specific Operating Plan, including operation completion time performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal year or quarter. The specific changes are offered in proposed 39 C.F.R. §§ 3055.2(m) and 3055.31(g) in Attachment 3.

**IV. The Timing of the New Proposed Requirements Should Accord with the PSRA and Should be Reasonably Tailored to Each New Requirement.**

The Postal Service comments on several aspects of the timing of the proposed new requirements.

**A. New Requirements Should Apply Only Prospectively.**

First, the Commission’s proposed new requirements, including the new reporting requirements, should commence and be applied only *prospectively* after the final rules have been established and taken effect. To apply the proposed rules otherwise would contravene constitutional and statutory principles of due process; it would also impose

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<sup>16</sup> See Motion of the United States Postal Service Requesting Clarification of Certain ACD Directives, Docket No. ACR2021 (June 14, 2022), at 4-6.



unreasonable hardship on the Postal Service. Additionally, some retroactive reporting would not be possible. For instance, the Postal Service will not be able retroactively to report root cause point impact data. These data can reflect information beginning only from FY 2023 Q4 and reported in the following quarter.<sup>17</sup>

The need for prospective reporting is especially necessary in light of the provisions in the PSRA that authorize the Commission to evaluate the Postal Service's compliance, prescribe remedial action, order discontinuance of particular nonpostal services, and even impose fines on the Postal Service for deliberate noncompliance with requirements related to the nonpostal services.<sup>18</sup> The Postal Service should not face the prospect of being penalized for noncompliance with requirements, which Congress directed must be implemented by regulations as necessary, until after those regulations are finally adopted and in effect. In this instance, retroactive application would be both unlawful and unfair.<sup>19</sup>

Moreover, it is no consolation to characterize the requirement as prospective on the basis that the reporting itself is to be filed after the regulations are issued. To the contrary, if the Postal Service were required to report on service that occurred prior to the effective date of the new implementing regulations, it would not have had adequate

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<sup>17</sup> While these data are currently collected, programming work will need to be developed and run to aggregate these data.

<sup>18</sup> 39 U.S.C. §§ 3705(e)(2)-(4).

<sup>19</sup> See generally *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (“... [T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.”) (footnote omitted); *Griffon v. United States Dep’t of HHS*, 802 F.2d 146, 151 (5<sup>th</sup> Cir. 1986) (refusing to apply statute with civil penalties retroactively absent unequivocal Congressional intent to do so).

advance notice of precisely the work needed to gather and measure the data. A subsequent application of the new requirements to that time period – and the consequence of civil penalties for noncompliance – would be fatally retrospective.

It would obviously make no sense to make the Commission's new rules apply to FY 2022, which has already concluded, and for which no regulations were even established, let alone in effect. Indeed, the PSRA itself was not enacted until more than half of that fiscal year had already passed. But even now, the Commission's new regulations are not yet established or in effect. Once they are final and effective, then they should be applied only prospectively.<sup>20</sup>

**B. The PSRA Requires Only Annual Reporting for Nonpostal Services.**

Second, the PSRA expressly authorized *annual* reporting to the Commission on the nonpostal services under new section 3705.<sup>21</sup> There is no *quarterly* reporting mentioned. It is rather an annual report due within 90 days of the end of the applicable fiscal year. The Commission then reviews compliance as part of its annual compliance determination due 90 days later. The Commission cannot expand the scope of these specific new statutory obligations. Congress prescribed the new reporting, and it did not provide the Commission with any specific broader authority on this issue. To the extent that the Commission seeks to rely instead upon any of its pre-existing general

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<sup>20</sup> All of the new regulations should be applied only prospectively.

<sup>21</sup> Proposed 39 U.S.C. § 3705(a)(1) sets out the timeline for the annual report that the Postal Service must provide to the PRC about its provision of nonpostal service.

authorities, the more specific, new statute on this particular topic controls.<sup>22</sup> In the PSRA, Congress expressly authorized the Commission to prescribe through regulations the “methodologies” for such annual reporting, 39 U.S.C. § 3705(a)(1), as well as “the content and form” of such reporting, 39 U.S.C. § 3705(b)(1). By contrast, Congress could have, but did not, authorize the Commission to prescribe also the *frequency* of this reporting, which Congress itself set to be *annual*. 39 U.S.C. § 3705(a). The Postal Service has accordingly made edits to proposed 39 C.F.R. § 3055.70 in Attachment 3 to this effect.

The Postal Service acknowledges that in 2010, over a decade ago, when the Commission set certain market dominant service performance reporting requirements in Order No. 465, the Commission rejected the notion that such market dominant postal services reporting should be only annually and not also quarterly under its then-existing statutory authorities, including sections 503, 3622, 3651-52.<sup>23</sup> However, the same rationale does not apply to the new reporting requirements for nonpostal products authorized pursuant to the new PSRA. As interpreted by the Commission, the PSRA created a requirement for annual reporting for these services and authorized the Commission to fine the Postal Service for deliberate noncompliance. The Commission is further authorized to promulgate regulations “necessary to carry out this section.”<sup>24</sup> In

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<sup>22</sup> See generally *United States v. Estate of Romani*, 523 U.S. 517, 532 (1998) (“...[I]t would be anomalous to conclude that Congress intended the ... [earlier and more general] statute to impose greater burdens on the citizen than those specifically crafted for ... purposes [of the later, more specific statute on that topic] ....”).

<sup>23</sup> Docket No. RM2009-11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurement and Customer Satisfaction (May 25, 2010), at 1, 15-17 (Order No. 465).

<sup>24</sup> See 39 U.S.C. § 3705(f).

order to carry out the Postal Service's annual reporting to the Commission 90 days after the end of the fiscal year, as well as the Commission's own annual compliance determination 90 days later, it is not "necessary" also to impose quarterly reporting requirements. Unlike its reliance in 2010 on its more general statutory authorities, the Commission is limited under the new law to the specific terms enacted by Congress on this topic. As no quarterly reporting is necessary to fulfill the annual reporting and annual compliance determination obligations under the PSRA for the competitive nonpostal services, the Commission may not require quarterly reporting for nonpostal services.

**C. Reasonable Time Should be Afforded to Implement Any New Reporting Requirements.**

Third, the Postal Service must have a reasonable opportunity to implement the new reporting requirements under the PSRA and any of the Commission's proposed regulations, with respect to both market dominant services and nonpostal services.

*1. The Commission Should Provide the Postal Service Time to Evaluate and Make Necessary Requests Related to Any New Reporting Requirements for Nonpostal Services.*

To the extent that the Commission's new regulations require the Postal Service to report on certain nonpostal services,<sup>25</sup> the Postal Service will need time to consider and implement each of the new reporting requirements. Before the Postal Service can even begin to determine when it may be able to report on quality of service for nonpostal services, the Postal Service will need time to determine the service standards

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<sup>25</sup> This pertains to the Commission's proposed regulations for nonpostal services, including in 39 C.F.R. §§ 3055.1, 3055.25, 3055.30, and 3055.70.

to measure against and the service performance measurement system that will be used. To the extent that the Postal Service determines that it can provide the requested data, it will need to file revised versions of the Postal Service's Service Performance Measurement Plan.<sup>26</sup> Should the Postal Service determine that the required reporting may not be possible or need to be delayed, the Postal Service will need, as the Commission has already recognized, to file petitions for semi-permanent exceptions and/or temporary waivers of the new reporting requirements.<sup>27</sup> Such petitions will result in further proceedings before final reporting requirements are in place. Therefore, the Commission should make any reporting requirements for nonpostal services effective only after the Postal Service has had a reasonable opportunity to review them, and after any resulting petitions for semi-permanent exceptions and/or temporary waivers of such reporting requirements are finally resolved. This approach will also help avoid the gathering and filing of data that may prove confusing and burdensome and therefore contrary to congressional intent if later requirements are modified or inapplicable based on the outcome of exception and/or waiver petitions.

Indeed, there is Commission precedent for such an approach. In Order No. 465, the Commission also recognized that the Postal Service should have the opportunity to petition for semi-permanent exceptions and/or temporary waivers before full compliance with the new reporting requirements under that order. Accordingly, in Order No. 465 issued in May 2010, the Commission did not expect the Postal Service "to achieve full

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<sup>26</sup> See 39 C.F.R. § 3055.5.

<sup>27</sup> Order No. 6275 at 13; see 39 C.F.R. § 3055.3.

compliance” with those new reporting requirements until the filing of its FY 2011 Annual Compliance Report in December 2011.<sup>28</sup>

Following the issuance of Order No. 465, the Postal Service initiated several proceedings to request semi-permanent exceptions and temporary waivers from certain of the Commission’s reporting requirements.<sup>29</sup> These proceedings took a number of months to complete. Order No. 465 itself was the product of a rulemaking docket that had been initiated on September 2, 2009, in Docket No. RM2009-11. When Order No. 465 was issued on May 25, 2010 with the adoption of new reporting rules, the Commission simultaneously ordered that the Postal Service would have until June 25, 2010, to file initial requests for semi-permanent exceptions, and interested persons would then have until July 16 to file comments. Order No. 465 further provided that the Postal Service would have until September 10, 2010, to file initial requests for temporary waivers (a date later extended to October 1 in Order No. 531), and interested persons would then have until October 1 to file comments. Semi-permanent exceptions were granted in part on September 3, 2010, and October 27, 2010, in Order Nos. 531 & 570, respectively. Waiver requests were granted in part and clarified on June 16, 2011, and August 4, 2011, in Order Nos. 745 & 789, respectively. The proceedings were essential to detail and clarify the new reporting requirements, establish the contours of reasonable exceptions and waivers, and afford the Postal Service, other interested persons, and the Commission itself, adequate time to raise and consider all issues

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<sup>28</sup> Order No. 465 at 21.

<sup>29</sup> See, e.g., Docket Nos. RM2010-11, RM2010-14, and RM2011-1.

before full compliance was expected in the Postal Service's Annual Compliance Report in December 2011.

Based on the proceedings that followed Order No. 465, the Commission should ensure that the new regulations, as well as all related petitions for exceptions or waivers, are fully resolved before expecting full compliance with these new reporting requirements, especially for nonpostal products. Having such final resolutions in place before the Postal Service implements the new reporting requirements can eliminate burdensome, unnecessary, and duplicative expenses related to implementation, including technology and personnel time, and will allow the Postal Service to implement the new regulations in an effective and economical manner.

2. *The Commission's Requirements Related to the Public Performance Dashboard Should be Staggered.*

The PSRA expressly provides a timeline for implementation of the Public Performance Dashboard. Specifically, under 39 U.S.C. § 3692, the Postal Service must establish and provide the Commission reasonable targets for performance for each of the Postal Service's market dominant products no later than 60 days after the beginning of the fiscal year in which they will apply. Thereafter, the Commission has 90 days to provide the Postal Service requirements for the Postal Service to publish nationwide, regional, and local delivery area performance information. No later than 60 days after the Commission provides these requirements to the Postal Service, the Postal Service is required to implement and make available to the public the initial iteration of the new Public Performance Dashboard.

The Commission's requirements should have staggered implementation deadlines based on the time and effort necessary to implement each requirement. Given the robust set of proposed reporting requirements and the time necessary to review and implement these requirements, such an approach would be reasonable and practical and allow the Postal Service adequate time to implement the new measurements and perform the necessary data gathering. Indeed, the PSRA anticipates and allows for this reasonable and practical approach by requiring the Postal Service to "make any subsequent changes" to the dashboard in accordance with the Commission's requirements.<sup>30</sup>

The Postal Service has considered its current capacity to comply with existing reporting requirements as well as the Commission's proposed reporting requirements related to the Public Performance Dashboard, and provides the following reasonable timetable to implement these proposed requirements:

- Phase 1: 150 days after the final regulations are issued, this will include score by Market Dominant Mail Class (First Class Mail, USPS Marketing Mail, Periodicals, Package Services);
- Phase 2: 210 days after the final regulations are issued, this will include scores by Service Standard, Non-Profit, and Reply Mail; and
- Phase 3: 300 days after the final regulations are issued, this will include scores by Market Dominant Products, and Political/Election Mail.

3. *The Commission's Proposed Reporting Rules Should have Staggered Implementation Dates.*

The Postal Service has also considered its current capacity to comply with existing reporting requirements, as well as the Commission's proposed reporting

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<sup>30</sup> 39 U.S.C. 3692(c)(8).



requirements, and provides the following reasonable timetable to implement certain proposed requirements related to market dominant products:

- Actual Days to Deliver: the third fiscal quarter after the final regulations are issued.
- Root Cause Point Impact Data: the Annual Compliance Report for the fiscal year after the final regulations are issued.
- Mail Excluded from Measurement:
  - Attachment A – the third fiscal quarter after the final regulations are issued.
  - Attachment B – the third fiscal quarter after the final regulations are issued.

## **V. Other Observations**

### **A. Actual Days to Delivery**

In its initial Order (Apr. 6, 2022, Order No. 6160), the Commission suggested requiring that the Postal Service report the average actual calendar days to delivery for all market dominant products.

In its September 21, 2022, Order (Order No 6275), in proposed 39 C.F.R. §§ 3055.2(l) (annually) and 3055.31(f) (quarterly), the Commission clarified that “delivery days” for reporting purposes means days in which market dominant products are eligible for delivery, not calendar days.

As so clarified, the Postal Service confirms that it will report the average actual delivery days for each market dominant product at the current District, Postal Administrative Area (Area), and National levels. These data will be reported quarterly in the Service Performance Measurement (SPM) reports and annually in the Annual

Compliance Review (ACR) reports, detailing data from the previous quarter and previous fiscal year, respectively.

With respect to the proposed requirement in 39 C.F.R. §§ 3055.2(l) (annually) and 3055.31(f) (quarterly) that the Postal Service also report information on dispersion around the average, the Postal Service submits that such additional reporting is unnecessarily duplicative as that information is already provided within the Quarterly Variance Reports filed with the Commission.<sup>31</sup> The Postal Service, therefore, asks that the requirement to report information on dispersion around the average be removed. These proposed changes are shown in proposed 39 C.F.R. §§ 3055.2(l) and 3055.31(f) in Attachment 3.

#### **B. Root Cause Point Impact Data**

In Order No. 6160, the Commission proposed that the Postal Service report root cause point impact data for all market dominant products.

In Order No 6275, in proposed 39 C.F.R. §§ 3055.20(c), .21(b), .22(b), and .23(b), the Commission limited the root cause point impact data reporting to only those market dominant products (excepting those included in Special Services) that did not meet their service performance targets.

In that regard, the Postal Service will report point impact data for the top 10 root causes of on-time performance failures for each market dominant product (except those included in Special Services) that did not meet its service performance goal pursuant to 39 C.F.R. § 3055.2(d). For First-Class Mail products, the Postal Service will report the

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<sup>31</sup> See, e.g., 39 C.F.R. § 3055.45(a)(2).

top 10 root causes of failure at both the Area and the National level. For the remaining market dominant products that do not meet service performance targets, the Postal Service will report the top 10 root causes of failure at the National level. The Postal Service will report the top root causes for the previous fiscal year annually in the ACR. In addition, the Postal Service will continue its efforts to minimize the use of the “Unable to Assign” root cause failure category.

It should be understood, however, that requiring data be reported at the individual product level risks obscuring more than illuminating the service performance data. For example, terminology used to describe the market dominant products, such as “USPS Marketing Mail - High Density and Saturation Flats” will likely be unfamiliar to the general public and provide little useful insight into delivery performance. In addition, the point impact reporting would not be available for USPS Marketing Mail Every Door Direct Mail and USPS Marketing Mail DDU Entry Saturation Flats, as these products lack the required visibility; therefore, they should be excluded from this requirement, and the Postal Service has suggested this change in 39 C.F.R. § 3055.21(b) in Attachment 3.

### **C. Mail Excluded from Measurement**

In Order No. 6160, the Commission considered whether to require the Postal Service to report regularly on (a) mail volumes excluded from measurement, disaggregated by reason(s) for exclusion, and (b) mail volumes measured and unmeasured by Full Service Intelligent Mail barcode (IMb).

In Order No. 6275, in proposed 39 C.F.R. §§ 3055.2(n) (annually) and 3055.31(h) (quarterly), the Commission proposes to require such additional reporting for mail excluded from measurement.

With respect to proposal (a) requiring the reporting of mail volumes disaggregated by reason for exclusion, the Commission (Order No. 6275 at 16) proposes that the current quarterly report (“Attachment A – “Exclusion Reasons Breakdown”) be modified “to include the number of mailpieces excluded from measurement for each exclusion category as well as the percentage of the total exclusions represented by that exclusion category.” The Commission asserts (*id.*) that this additional information “allows for the evaluation of performance trends over time because as one exclusion reason decreases, other exclusion reasons will increase in percentage even if the number of mailpieces excluded remains unchanged because they now represent a larger percent of total exclusions.”

The problem with the proposed approach, however, is that, because each mailpiece may fall into more than one exclusion category, the total number of excluded mailpieces in the Attachment A report, as modified, will not align with the number of excluded mailpieces in the Attachment B report (“Total Measured and Un-Measured Volumes”). As a result, including the number of mailpieces excluded from measurement for each exclusion category has the potential to create ambiguity and confusion with the data.

Nor is the proposed inclusion of mail volume necessary to achieve the Commission’s perceived goal of evaluating performance trends. The Postal Service already provides mail volumes for each market dominant product in the Attachment B

report each quarter. Mailers and the Commission can leverage this existing data to evaluate measured and unmeasured mail volumes over time. In that regard, however, the Postal Service does not propose any changes to 39 C.F.R. § 3055.2(n) (annually) and 3055.31(h) (quarterly); rather it alerts the Commission to the issues raised above.

## **VI. Conclusion**

The Postal Service appreciates the opportunity to comment on this rulemaking and respectfully urges the Commission to adopt the Postal Service's recommendations described herein and as reflected in Attachment 3.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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October 31, 2022

**ATTACHMENT 1  
APPLICATION OF THE UNITED STATES POSTAL SERVICE  
FOR NON-PUBLIC TREATMENT**

In accordance with 39 C.F.R. § 3011.201, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Commission. The materials covered by this application are found in Attachment 2.

For the reasons stated below, the Postal Service respectfully requests that this application be granted, and the identified material be deemed non-public and sealed.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials in support of this filing include commercially sensitive information that, under good business practice, would not be disclosed publicly. Based on its long-standing and deep familiarity with postal and communications business and markets generally, and its knowledge of many firms, including competitors, mailers, and suppliers, the Postal Service does not believe that any commercial enterprise would voluntarily publish detailed information pertaining to procurement costs and related estimates. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3).<sup>1</sup>

**(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this**

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3 (June 27, 2018) at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**paragraph, identification means the name, phone number, and email address of an individual.<sup>2</sup>**

The Postal Service has a proprietary interest in the information contained within the non-public materials. The Postal Service designates Mikhail Raykher, Attorney, Corporate and Postal Business Law Section, to accept notice of any motions related to the non-public material or notice of the pendency of any subpoenas or orders requiring production of these materials. Mr. Raykher's email address is mikhail.raykher@usps.gov, and his telephone number is 202-268-4277.

- (3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.**

Attachment 2, that is filed with the Postal Service's comments in this matter, contains certain approximations of disaggregated costs that the Postal Service incurs for current service performance reporting and related estimates for costs that the Postal Service projects it would incur in order to comply with some of the reporting requirements outlined in the Commission's proposed regulations.

- (4) Particular identification of the nature and extent of the harm alleged, and the likelihood of each harm alleged to result from disclosure.**

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<sup>2</sup> Section 3011.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

If the information the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it quite likely that it would suffer commercial harm. This information is clearly commercially sensitive to the Postal Service, and the Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which it competes (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of mail, or those engaged in communications generally, that would disclose publicly information and data of comparable nature at a disaggregated level and with the details furnished here.

The data and information considered to be non-public includes the Postal Service's approximations of its current costs of sampling to support District-level reporting and an estimate of the total cost of sampling to support the proposed 5-digit ZIP Code-level reporting. The Postal Service does not publicly disclose such data. The Postal Service engages and will continue to engage in contracts in order to comply with service performance reporting requirements, and has a strong interest in being able to obtain the best prices possible for such services. Revealing the Postal Service's costs and cost estimates for certain service performance initiatives has the potential for interfering with the procurement process and defeating the Postal Service's interest in obtaining the best value in procurement solicitations. Suppliers could potentially use the cost information in this matter to inflate their bids for services they provide now and may provide in the future.

Public disclosure would, accordingly, undermine the Postal Service's procurement process.

**(5) At least one specific hypothetical, illustrative example of each alleged harm.**

**Harm: Public disclosure of the current and estimated reporting costs found in Attachment 2.**



**Hypothetical:** A supplier of internal reporting and/or service performance measurement services or its representative obtains a copy of the unredacted version of Attachment 2. The supplier has already been in negotiations to provide such services to the Postal Service and has determined an appropriate price to fit the supplier's cost structure. The supplier sees the Postal Service's costs for specific reporting requirements and uses this information as a justification to inflate its prices in response to procurement solicitations. The Postal Service's ability to negotiate the best value from the bargain suffers as a result. The same scenario would apply to such a supplier's ability to position itself in future, rather than ongoing, negotiations with the Postal Service, based on what the supplier knows, or believes it knows, about what the Postal Service is willing to pay.

**(6) The extent of protection from public disclosure deemed to be necessary.**

The Postal Service maintains that the portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for internal reporting and/or service performance measurement services, including persons acting on behalf of the respective subjects of the non-public information, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). The Postal Service seeks full protection during this time period and thereafter.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

## **PUBLIC ATTACHMENT 2**

### **Public Cost Information in Support of the Comments of the United States Postal Service**

The following cost information was withheld from the public filing of the Comments of the United States Postal Service and replaced in that filing by references to “Estimate x”:

Estimate A = [REDACTED]

Estimate B = [REDACTED]

Estimate C = [REDACTED]

Estimate D = [REDACTED]

Estimate E = [REDACTED]

Estimate F = [REDACTED]

Estimate G = [REDACTED]

## **Part 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING**

1. The authority citation for part 3055 is revised to read as follows:

**Authority:** 39 U.S.C. 503; 3652; 3653; 3692(b) and (c); 3705.

### **Subpart A—Annual Reporting of Service Performance Achievements**

~~2. Revise § 3055.1 to read as follows:~~

~~**§ 3055.1 Annual Reporting of service performance achievements.**~~

~~For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter (and for each competitive nonpostal service product specified in the Mail Classification Schedule in part 3040, appendix B to subpart A of part 3040 of this chapter), the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.~~

3. Amend § 3055.2 by revising paragraphs (a) and (j) and by adding paragraphs (l) through (n) to read as follows:

**§ 3055.2 Contents of the annual report of service performance achievements.**

(a) The items in paragraphs (b) through (n) of this section shall be included in the annual report of service performance achievements.

\* \* \* \* \*

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

\* \* \* \* \*

(l) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal year, provided at the District, Postal Administrative Area, and National levels. "Actual delivery days" shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. ~~Such information shall include the following information on dispersion around the average:~~

~~(1) the percent of mailpieces delivered within +1 day of the applicable service standard;~~

~~(2) the percent of mailpieces delivered within +2 days of the applicable service standard; and~~

~~(3) the percent of mailpieces delivered within +3 days of the applicable service standard.~~

(m) A description of each Site-Specific Operating Plan, including operation completion time ~~on-time service~~ performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous

fiscal year. Such information shall be at the National level and disaggregated by Division and Region.

(n) A description of the total mail measured and excluded from measurement.

Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded from measurement during the previous fiscal year. The report shall include:

(i) the exclusion reason;

(ii) the exclusion description;

(iii) the number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) the exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.*, provided in paragraph (n)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.*, the sum of all values provided in paragraph (n)(1)(iii) of this section).

(2) The report described in paragraph (n)(1) of this section shall follow the format as shown below:

**Table 1 – Exclusion Reasons Report for Fiscal Year**

<b>Exclusion Reason</b>	<b>Exclusion Description</b>	<b>Number of Mailpieces Excluded from Measurement</b>	<b>Exclusion Reason as a Percent of Total Exclusions</b>


(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and unmeasured during the previous fiscal year. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY).

(4) The report described in paragraph (n)(3) of this section shall follow the format as shown below:

**Table 2 – Total Mail Measured/Unmeasured Volumes Report for Fiscal Year**

Class/Product	^^		^^		^^	
	Prior FY	SPLY	Prior FY	SPLY	Prior FY	SPLY
Total Number of Pieces (RPW-ODIS)						
Total Number of Pieces in Measurement						
Total Number of Pieces Eligible for Full-Service IMb						
Total Number of Full-Service IMb Pieces Included in Measurement						
Total Number of Full-Service IMb Pieces Excluded from Measurement						
Total Number of Pieces Not in Measurement						
% of Pieces in Measurement Compared to Total Pieces						

% of Pieces Not in Measurement Compared to Total Pieces						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces						

(5) Descriptions of the current methodologies used to verify the accuracy, reliability, and representativeness of service performance data for each service performance measurement system.

**§ 3055.7 [Removed and Reserved].**

4. Remove and reserve § 3055.7.

5. Amend § 3055.20 by revising paragraphs (a) and (b) and by adding paragraph (c) to read as follows:

**§ 3055.20 First-Class Mail.**

(a) *Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats.* For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Letter Post.* For each of the Outbound Single-Piece First-Class Mail International and Inbound



Letter Post products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined.

(c) For each product that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels, during the previous fiscal year. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

6. Revise § 3055.21 to read as follows:

**§ 3055.21 USPS Marketing Mail.**

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the USPS Marketing Mail class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure.

Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included. This paragraph shall not apply to USPS Marketing Mail Every Door Direct Mail or USPS Marketing Mail DDU Entry Saturation Flats.

7. Revise § 3055.22 to read as follows:

**§ 3055.22 Periodicals.**

(a) For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Periodicals class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

8. Revise § 3055.23 to read as follows:

**§ 3055.23 Package Services.**

(a) For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Package Services class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

9. Revise § 3055.25 to read as follows:

**§ 3055.25 Nonpostal Products.**

To any extent prescribed for each such service, For each ~~product that is a~~ nonpostal market dominant service authorized pursuant to 39 U.S.C. ~~chapter 37§~~ 404(e) and each agreement, or substantially similar set of agreements, authorized pursuant to 39 U.S.C. § 3703 (to any extent relevant under 39 U.S.C. § 3703(a)(1)(A)), the Postal Service shall report an analysis of the quality of service ~~the on-time service performance (as a percentage rounded to one decimal place).~~

**Subpart B—Periodic Reporting of Service Performance Achievements**

10. Revise § 3055.30 to read as follows:

**§ 3055.30 Periodic reporting of service performance achievements.**

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter ~~(and for each competitive nonpostal service product specified in the Mail Classification Schedule in~~

~~part 3040, appendix B to subpart A of part 3040 of this chapter~~, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter, except where otherwise specified by the Commission).

11. Amend § 3055.31 by revising paragraphs (a) and (d) and by adding paragraphs (f) through (i) to read as follows:

**§ 3055.31 Contents of the Quarterly Report of service performance achievements.**

(a) The items in paragraphs (b) through (h) of this section shall be included in the quarterly report of service performance achievements.

\* \* \* \* \*

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

\* \* \* \* \*

(f) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal quarter, provided at the District, Postal Administrative Area, and National levels. “Actual delivery days” shall include all days in which Market Dominant products are eligible for delivery,

excluding Sundays and holidays. ~~Such information shall include the following information on dispersion around the average:~~

~~(1) the percent of mailpieces delivered within +1 day of the applicable service standard;~~

~~(2) the percent of mailpieces delivered within +2 days of the applicable service standard; and~~

~~(3) the percent of mailpieces delivered within +3 days of the applicable service standard.~~

(g) A description of each Site-Specific Operating Plan, including operation completion time ~~on-time service~~ performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal quarter. Such information shall be by Nation and disaggregated by Division and Region.

(h) A description of the total mail measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded during the previous fiscal quarter.

The report shall include:

(i) the exclusion reason;

(ii) the exclusion reason description;

(iii) the number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) the exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (i.e., provided in paragraph (h)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (i.e., the sum of all values in provided in paragraph (h)(1)(iii) of this section).

(v) The report shall include information from each quarter in the applicable fiscal year.

(2) The report described in paragraph (h)(1) of this section shall follow the format as shown below:

**Table 1 – Exclusion Reasons Report for Fiscal Quarter**

Exclusion Reason	Exclusion Description	Number of Mailpieces Excluded from Measurement				Exclusion Reason as a Percent of Total Exclusions			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and unmeasured during the previous fiscal quarter. The description shall explain in detail any notations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY). Each report is due within 60 days of the close of each fiscal quarter.

(4) The report described in paragraph (h)(3) of this section shall follow the format as shown below:

**Table 2 – Total Mail Measured/Unmeasured Volumes Report for Fiscal Quarter**

Class/Product	^^		^^		^^	
	Prior FQ	SPLY	Prior FQ	SPLY	Prior FQ	SPLY
Total Number of Pieces (RPW-ODIS)						
Total Number of Pieces in Measurements						
Total Number of Pieces Eligible for Full-Service IMb						
Total Number of Full-Service IMb Pieces Included in Measurement						
Total Number of Full-Service IMb Pieces Excluded from Measurement						
Total Number of Pieces Not in Measurement						
% of Pieces in Measurement Compared to Total Pieces						
% of Pieces Not in Measurement Compared to Total Pieces						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces						

(i) A report of quarterly third-party audit results of its internal service performance measurement system for Market Dominant products. This report shall include a description of the audit measures used and the audit results specific to

inbound and outbound single-piece First-Class Mail International and the Green Card option of the Return Receipt service. For any measure deemed by the auditor to be not achieved or only partially achieved, the Postal Service shall include in its report an explanation of its plan to achieve said measure in the future. Each report is due within 60 days of the close of each fiscal quarter.

12. Revise § 3055.45 to read as follows:

**§ 3055.45 First-Class Mail.**

(a) *Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats.* For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Letter Post.* For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post products within the First-Class Mail class, report the:



(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels.

13. Revise § 3055.50 to read as follows:

**§ 3055.50 USPS Marketing Mail.**

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the USPS Marketing Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the

Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

14. Amend § 3055.55 to revise the introductory text of paragraph (a) to read as follows:

**§ 3055.55 Periodicals.**

(a) *In-County Periodicals.* For the In-County Periodicals product within the Periodicals class, report the:

\* \* \* \* \*

15. Revise § 3055.60 to read as follows:

**§ 3055.60 Package Services.**

(a) For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

(b) For each product within the Package Services class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

16. Amend § 3055.65(b) by removing paragraph (b)(1) and redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4) to read as follows:

**§ 3055.65 Special Services.**

\* \* \* \* \*

(b) \* \* \*

- (1) The percentage of green cards properly completed and returned;
- (2) The percentage of green cards not properly completed, but returned;
- (3) The percentage of mailpieces returned without a green card signature; and
- (4) The percentage of the time the service meets or exceeds its overall service standard.

\* \* \* \* \*

~~17. Revise § 3055.70 to read as follows:~~

~~**§ 3055.70 Nonpostal Products.**~~

~~For each product that is a nonpostal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the on-time service performance (as a percentage rounded to one decimal place), provided at the District, Postal Administrative Area, and National levels.~~

18. Add subpart D to read as follows:

**Subpart D – Public Performance Dashboard**

Sec.

3055.100 Definitions applicable to this subpart.

3055.101 Public Performance Dashboard.

3055.102 Contents of the Public Performance Dashboard.

3055.103 Format for data provided in the Public Performance Dashboard.

**§ 3055.100 Definitions applicable to this subpart.**

(a) *Actual delivery days* refers to all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays.

(b) *Election mail* refers to items such as ballots, voter registration cards, and absentee applications that an authorized election official creates for voters.

(c) *Nonprofit mail* refers to USPS Marketing Mail mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(6) and the regulations promulgated thereunder and Periodicals mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(4) and the regulations promulgated thereunder.

(d) *Political mail* refers to any mailpiece sent for political campaign purposes by a registered candidate, a campaign committee, or a committee of a political party to promote candidates, referendums, or campaigns.

**§ 3055.101 Public Performance Dashboard.**

The Postal Service shall develop and maintain a publicly available website with an interactive web-tool that provides performance information for Market Dominant products. This website shall be updated on a weekly basis, no later than one month from the date of data collection. The website shall include, at a minimum, the reporting requirements specified in § 3055.102 and adhere to the formatting requirements specified in § 3055.103.

**§ 3055.102 Contents of the Public Performance Dashboard.**

(a) The items in paragraphs (b) through (l) of this section shall be included in the Public Performance Dashboard.

(b) Within each class of Market Dominant products, for each Market Dominant product and each service standard applicable to each Market Dominant product:

(1) the on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) the on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) the on-time service performance (as a percentage rounded to one decimal place) for each District; ~~and~~

~~(4) the on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code.~~

(c) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) the average time in which the product was delivered, measured by actual delivery days, for the Nation;

(2) the average time in which the product was delivered, measured by actual delivery days, for each Postal Administrative Area; and

(3) the average time in which the product was delivered, measured by actual delivery days, for each District; ~~and~~

~~(4) the average time in which the product was delivered, measured by actual delivery days, for each 5-Digit ZIP Code.~~

(d) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) the on-time service performance (as a percentage rounded to one decimal place) for any given time period that can be selected by a dashboard user within the previous two fiscal years (within FY 2021 or later for National scores, and within FY 2022 or later for Area and District scores); and

(2) the average time in which the product was delivered, measured by actual delivery days, for any given time period that can be selected by the dashboard user within the previous two fiscal years (within FY 2021 or later for National scores, and within FY 2022 or later for Area and District scores).

~~(e) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:~~

~~(1) the on-time service performance (as a percentage rounded to one decimal place) for any given pair of origin/destination 3-Digit or 5-Digit ZIP Codes that can be selected by a dashboard user; and~~

~~(2) the average time in which the product was delivered, measured by actual delivery days, for any given pair of origin/destination 3-Digit or 5-Digit ZIP Codes to be selected by the dashboard user.~~

(f) For identifiable Political mail:

(1) the processing scores for ~~on-time~~ service performance (as a percentage rounded to one decimal place) for the Nation;

(2) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each District;

~~(4) the on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;~~

~~(5) the average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;~~

~~(6) the average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;~~

~~(7) the average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and~~

~~(8) the average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.~~

(g) For identifiable Election mail:

(1) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each District;

~~(4) the on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;~~

~~(5) the average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;~~

~~(6) the average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;~~

~~(7) the average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and~~

~~(8) the average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.~~

(h) For the First-Class Mail that the Postal Service identifies as Single-Piece Reply Mail:

(1) the on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) the on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) the on-time service performance (as a percentage rounded to one decimal place) for each District;

~~(4) the on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;~~

(5) the average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;



(6) the average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area; and

(7) the average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and

~~(8) the average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.~~

(i) For identifiable Nonprofit mail (within Periodicals and USPS Marketing Mail classes of mail):

(1) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) the processing scores for on-time service performance (as a percentage rounded to one decimal place) for each District; and

~~(4) the on-time service performance (as a percentage rounded to one decimal place) for each 5-Digit ZIP Code;~~

~~(5) the average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;~~

~~(6) the average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area;~~

~~(7) the average time in which the mailpieces were delivered, measured by actual delivery days, for each District; and~~

~~(8) the average time in which the mailpieces were delivered, measured by actual delivery days, for each 5-Digit ZIP Code.~~

~~(9) the point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels. “Point impact data” means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service’s methodology for calculating point impact data shall be included.~~

(j) For each Market Dominant product and applicable service standard, the on-time service performance target currently in effect, as well as the on-time service performance target for the previous fiscal year.

(k) A summary of the methodology used to group 5-Digit ZIP Codes into the Postal Administrative Areas and Districts with links to more detailed explanations if applicable.

(l) An application that would allow a dashboard user to initiate a query in order to access, for each Market Dominant product and applicable service standard, the on-time service performance (as a percentage rounded to one decimal place) for a District and ~~average time in which a mailpiece is delivered~~ by inputting the user’s street address, 5-Digit ZIP Code, or post office box.

**§ 3055.103 Format for data provided in the Public Performance Dashboard.**

(1) The results of a user-initiated query and the data underlying the query results should be exportable via a machine-readable format, ~~including but not limited to as~~ a comma-separated data file, ~~an Excel spreadsheet, XML, or a JSON file, and s~~ Such data should be made accessible to any person or entity utilizing tools and methods designed to facilitate access to and extraction of data in bulk, such as an Application Programming Interface (API).

(2) When there is a negative deviation from service performance standards, the dashboard should clearly indicate such deviation from expected performance and present the service performance from the prior week and the same period last year.